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| 10/796,367 | 03/09/2004 | Guy J. Rackham | END920030163US1 | 2245 |

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| EXAMINER |
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GUY J. RACKHAM

Appeal No. 2010-012202
Application 10/796,367
Technology Center 3600

Before DALE M. SHAW, *Division 2 Support Administrator*.

ORDER DISMISSING APPEAL

On June 16, 2010, an Examiner's Answer containing a New Grounds of Rejection was mailed to Appellant.

Under the Board's regulations at 37 C.F.R. §41.50(a)(2), the Appellant had a statutory response time to the Examiner's Answer of two months to either 1) reopen prosecution, or 2) maintain the appeal by filing

a Reply Brief to the Examiner's Answer. The Appellant has failed to exercise either of the options under 37 C.F.R. §41.50(a)(2), which reads as follows:

- (2) If a supplemental examiner's answer is written in response to a remand by the Board for further consideration of a rejection pursuant to paragraph (a)(1) of this section, the appellant must within two months from the date of the supplemental examiner's answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the rejection for which the Board has remanded the proceeding:
- (i) *Reopen prosecution.* Request that prosecution be reopened before the examiner by filing a reply under §1.111 of this title with or without amendment or submission of affidavits (§§1.130, 1.131 or 1.132 of this title) or other evidence. Any amendment or submission of affidavits or other evidence must be relevant to the issues set forth in the remand or raised in the supplemental examiner's answer. A request that complies with this paragraph will be entered and the application or the patent under *ex parte* reexamination will be reconsidered by the examiner under the provisions of §1.112 of this title. Any request that prosecution be reopened under this paragraph will be treated as a request to withdraw the appeal.
 - (ii) *Maintain appeal.* Request that the appeal be maintained by filing a reply brief as provided in §41.41. If such a reply brief is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the examiner under paragraph (a)(2)(1) of this section.

Accordingly, it is ORDERED that the appeal filed February 26, 2009, is DISMISSED.

mls